

ORIGINAL

INDIANA UTILITY REGULATORY COMMISSION

Final Rulemaking

IURC RM #07-04
LSA #07-379(F)

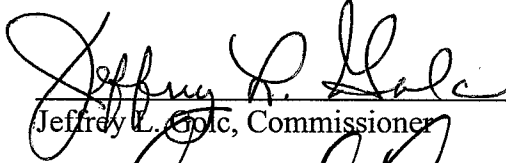
Amending 170 IAC 1-1.5-1 through 170 IAC 1-1.5-4 and 170 IAC 1-1.5-6
Governing Ex Parte Contacts with the Indiana Utility Regulatory Commission.
Repeals 170 IAC 1-1.5-5.


Upon prior publication of notice, and public hearing having been held October 4, 2007, at 2:00 p.m., E.D.T. (local time) in Judicial Courtroom 222, National City Center, 101 W. Washington Street, Indianapolis, Indiana, as required by the provisions of I.C. 4-22-2-1, *et seq.* the Indiana Utility Regulatory Commission, on November 7, 2007, at 2:00 p.m., E.S.T. in Judicial Courtroom 222, National City Center, 101 W. Washington Street, Indianapolis, Indiana, at which time a majority of members of said Commission were present, adopted the foregoing rule.

The Secretary is hereby directed to submit the aforesaid rule to the Attorney General and Governor of Indiana, for their approval of same, and thereafter to submit the aforesaid rule to the publisher, Indiana Register.

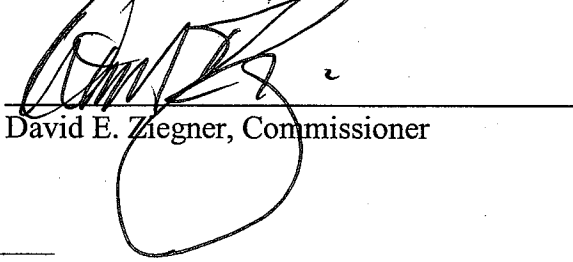
ABSENT

David Lott Hardy, Chairman

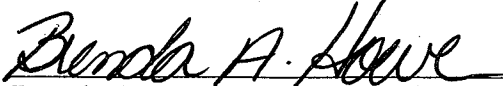

Jeffrey L. Golc, Commissioner


Larry S. Landis, Commissioner


Gregory D. Server, Commissioner


David E. Ziegner, Commissioner

ATTEST:


Brenda A. Howe, Secretary to the Commission

Date: NOV 07 2007

**TITLE 170 INDIANA UTILITY REGULATORY
COMMISSION**

Final Rule
LSA Document #07-379(F)

DIGEST

Amends 170 IAC 1-1.5-1 through 170 IAC 1-1.5-4 and 170 IAC 1-1.5-6, which governs ex parte contacts with the Indiana Utility Regulatory Commission. Repeals 170 IAC 1-1.5-5. Effective 30 days after filing with the Publisher.

170 IAC 1-1.5-1; 170 IAC 1-1.5-2; 170 IAC 1-1.5-3; 170 IAC 1-1.5-4; 170 IAC 1-1.5-5; 170 IAC 1-1.5-6.

SECTION 1. 170 IAC 1-1.5-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-1 Definitions

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5; IC 8-1-2-42; IC 8-1-2-61.5

Sec. 1. (a) The definitions in this section apply throughout this rule.

~~(a) As used in this rule, (b) "Commission" refers to the Indiana utility regulatory commission.~~

~~(b) As used in this rule, "filing- (c) "To file a report" means the filing of written testimony filed by or the presentation of oral testimony presented by, or both, by a technical employee in a pending proceeding.~~

~~(c) As used in this rule, (d) "Proceeding" means a formally docketed proceeding before the commission. The term does not include any of the following:~~

~~(1) A rulemaking.~~

~~(2) A thirty (30) day filing under IC 8-1-2-42(a).~~

~~(3) A filing under IC 8-1-2-61.5. IC 8-1-2-61.5(a).~~

~~(4) A petition under 170 IAC 7-4.~~

~~(5) An informal investigation.~~

~~(6) An investigation and disposition by the consumer affairs division of the commission.~~

~~(7) An application or notice of change form filed under IC 8-1-34.~~

~~(d) As used in this rule, (e) "Technical employee" means a professional an employee within one~~

~~(1) of the commission working in the accounting, economic, engineering, or other professional commission's technical advisory staff division. The term includes the utilities director. divisions.~~

(Indiana Utility Regulatory Commission; 170 IAC 1-1.5-1; filed Dec 9, 1996, 10:00 a.m.: 20 IR 938; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA; filed May 24, 2007, 4:15 p.m.: 20070620-IR-170060514FRA)

SECTION 2. 170 IAC 1-1.5-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-2 Pending proceeding

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 2. For purposes of this rule, a proceeding is considered pending:

- (1) until twenty (20) days after the commission issues a final order if no petition for rehearing or reconsideration has been filed; or
- (2) until twenty (20) days after the commission denies a petition for rehearing or reconsideration of a final order; or
- (3) until the commission issues a final order following a petition for rehearing or reconsideration; or
- (4) during an appeal of an order of the commission to a court of appellate jurisdiction; or
- (5) **from thirty (30) days before the date of filing until twenty (20) days after the date the commission issues a final order in any remand of an appeal described in subdivision (4) of this section; or the proceeding**
- (6) **and until: the Commission issues an Order following a Petition for Rehearing or Reconsideration or until**
- (a) **all petitions for rehearing or reconsideration and all appeals to a court of appellate jurisdiction have been determined or decided;**
- (b) any opportunity for a further appeal has been exhausted; and
- (c) no further action is required by the commission.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.5-2; filed Dec 9, 1996, 10:00 a.m.: 20 IR 939; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)

SECTION 3. 170 IAC 1-1.5-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-3 Violations

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 3. (a) Unless required for the disposition of ex parte matters specifically authorized by statute, rule, or order of the commission, all members of the commission, ~~all administrative law judges~~ **an attorney assigned to a particular proceeding as an administrative law judge**, ~~(except a judge assigned as a settlement judge in a particular proceeding)~~, and ~~all technical employees, (except a technical employee directed~~ **assigned to file a report advise the commission** in a particular proceeding); may not communicate, directly or indirectly, regarding any issue in a proceeding while the proceeding is pending with **any**:

(1) ~~any~~:

- (A) party;
- (2) ~~(B)~~ party's employee, attorney, or representative; or
- (3) ~~(C)~~ entity known to act on behalf of a party;
- (4) ~~(2)~~ any person who has:
 - (A) a direct interest in the outcome of the proceeding; or
- ~~(3) any person who has (B) served as an investigator or advocate in the proceeding or in its preadjudicative stage;~~
- ~~(4) any administrative law judge~~ **(5) attorney** assigned as a settlement judge in a particular proceeding; or
- ~~(5) any (6) technical employee directed to file a report in the proceeding;~~ without notice and opportunity for all parties to participate in the communication.
- (b) Unless required for the disposition of ex parte matters specifically authorized by statute, rule, or order of the commission, a person described in subsection (a)(1), (a)(2), (a)(3), (a)(4), ~~or (a)(5)~~, or **(a)(6)** may not communicate, directly or indirectly, regarding any issue in a proceeding while the proceeding is pending with any:
 - (1) member of the commission;

- (2) **attorney assigned to a particular proceeding as an** administrative law judge; (~~except a judge assigned as a settlement judge in a particular proceeding~~); or
- (3) technical employee (~~except a technical employee directed~~ **assigned to file a advise the commission** in a particular proceeding;
- without notice and opportunity for all parties to participate in the communication.
- (c) This section does not prohibit any person from communicating ex parte with any member or employee of the commission with respect to undisputed administrative or procedural matters in connection with a proceeding.
- (d) Only to the extent not otherwise inconsistent with this rule, any person may make educational or informational communications that are not intended to persuade or advocate a position on an issue in a particular proceeding while the proceeding is pending.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.5-3; filed Dec 9, 1996, 10:00 a.m.: 20 IR 939; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)

SECTION 4. 170 IAC 1-1.5-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-4 Communication within the commission

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 4. Members of the commission, ~~administrative law judges,~~ **its attorneys**, and technical employees may communicate with each other regarding a particular proceeding pending before the commission. However, an ~~administrative law judge attorney~~ assigned as a settlement judge or a technical employee directed to file a report in a particular proceeding may not communicate regarding the particular proceeding with members of the commission, ~~administrative law judges attorneys~~ not assigned as settlement judges, or technical employees not assigned to file ~~reports a report~~ in that particular proceeding. ~~regarding either of the following matters:~~

- (1) ~~Ex parte communications of a type that the member of the commission, administrative law judge, or technical employee would be prohibited from receiving under section 3 of this rule.~~
- (2) ~~Any information outside the evidentiary record of the proceeding.~~

(Indiana Utility Regulatory Commission; 170 IAC 1-1.5-4; filed Dec 9, 1996, 10:00 a.m.: 20 IR 939; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)

SECTION 5. 170 IAC 1-1.5-6 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.5-6 Disclosure

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 6. (a) A member of the commission, an ~~administrative law judge attorney~~, or a technical employee who receives a communication, which that person reasonably believes violates this rule shall:

- (1) tender to the record of the proceeding:
- (A) all written communications received;
 - (B) all written responses to the communication; and
 - (C) a memorandum stating:
 - (i) the substance of all oral communications received;

- (ii) all oral responses made; and
 - (iii) the identity of each person from whom an ex parte communication was received; **and**
- (2) advise all parties that the items in subdivision (1) have been tendered to the record. ~~and~~
- (3) The presiding officer shall admit into the record all items tendered under this section.
- (b) Any ~~person identified as the source of a communication disclosed in accordance with subsection (a)~~ **party** shall be permitted an opportunity to respond on the record of the affected proceeding within ~~fifteen (15)~~ **ten (10)** days after notice of the disclosed communication.
- (c) In any proceeding in which a communication has been disclosed in accordance with subsection (a), the commission may determine whether any additional action is necessary in order to maintain a fair and impartial proceeding.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.5-6; filed Dec 9, 1996, 10:00 a.m.: 20 IR 940; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)

SECTION 6. 170 IAC 1-1.5-5 IS REPEALED.